1. Would a claim for COVID-19 be considered a compensable occupational disease injury under the Workers’ Compensation Act?

It depends on the circumstances. Pursuant to Wyoming Statute 27-14-102(a)(xi): "Injury" means any harmful change in the human organism other than normal aging and includes damage to or loss of any artificial replacement and death, arising out of and in the course of employment while at work in or about the premises occupied, used or controlled by the employer and incurred while at work in places where the employer's business requires an employee's presence and which subjects the employee to extra-hazardous duties incident to the business. "Injury" does not include:

(A) Any illness or communicable disease unless the risk of contracting the illness or disease is increased by the nature of the employment;

The Division of Wyoming Workers Compensation has publicly stated that if an employee believes he or she contracted COVID-19 at work, the employee should file a claim. The Division will determine if the illness qualifies for coverage using its normal procedures for handling a claim of injury. If the claim is determined to compensable, medical and indemnity (TTD) benefits that are reasonable, medically necessary, and related to the work place illness will be covered. If the claim is denied, the process to object and request a hearing remains the same.

2. What is the jurisdictional rationale that makes the claim compensable? Provide all rules that would apply to make the claim compensable.

The Division of Wyoming Workers Compensation is relying upon the existing statutory definition of compensable injury, Wyoming Statute 27-14-102(a)(xi).

3. If the employee is directed by the employer to quarantine due to possible exposure at work (and the employer is continuing full salary for 14 days), does the employer’s direction make the claim compensable under the Workers’ Compensation Act?

An employee is required to report an injury to the employer within 24 hours, and to the Division within 72 hours. If an employee who is quarantined at his or her employer’s direction
but has not developed or been diagnosed with Covid-19; then the employee has not suffered a compensable injury under Wyoming Workers Compensation Act.

If an employee does not qualify for workers’ compensation benefits and missed work due to a quarantine, they may be eligible for Unemployment Benefits, based upon the new emergency unemployment benefits rule adopted by the Wyoming Department of Workforce Services.

4. Are “first responders” considered at greater risk than the general public under the Workers’ Compensation Act?

The Division of Wyoming Workers Compensation has not issued any administrative guidance or classification for employers who are at greater risk for exposure to COVID-19.

5. Is “Pharmacy” considered a first responder under the Workers’ Compensation Act?

The Division of Wyoming Workers Compensation has not issued any administrative guidance or classification for employers who are at greater risk for exposure to COVID-19.

6. Is the state calling for legislation that would eliminate the burden of proof for workers making a COVID-19 occupational disease claim? If so, please provide summary of what is being proposed.

No legislation is currently pending before the Wyoming State Legislature.

7. Has the state governor issued an executive order allowing for COVID-19 cases compensable under the Workers’ Compensation Act? If so, please provide copy of the executive order.

No executive orders have been issued by Wyoming’s Governor concerning Workers Compensation coverage.

8. If COVID-19 claims are compensable under the Workers’ Compensation Act, is the waiting period waived?

TTD benefits are not allowed for the first three days of disability unless the employee is off more than eight days.

9. If the claim is compensable under the Workers’ Compensations Act and the employer pays the employee their full salary for the first two weeks during quarantine, how does this affect the TTD benefits?

TTD benefits are based upon two factors. The first factor is the medical provider’s determination of whether the employee can work at full or light capacity while isolated. The second factor is the employer’s ability to accommodate employees who can work remotely in
either a full time or part time capacity. If both factors are met, the employee may be entitled to light duty TTD benefits or may be disqualified from TTD benefits altogether.

10. Can the TTD benefits start be delayed if the employee’s disability extends beyond 14 days if the employee receives their full salary for the first two weeks?

If the claim is determined to compensable, medical and indemnity (TTD) benefits that are reasonable, medically necessary, and related to the work place illness will be covered. TTD benefits will be awarded from the time that an injury is determined to be compensable, until released to return to work by a medical professional. TTD benefits are the equivalent of 2/3 of the employee’s gross monthly wage at the time of injury, but not to exceed the Statewide Average Wage.

11. Can the TTD benefits be offset by the full salary paid to the employee?

No.